



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/763,983	02/28/2001	Tom Gilchrist	MUR-8564US	3635
7590	07/01/2004		EXAMINER	
Allan Ratner Ratner & Prestia Suite 301 One Westlakes Berwyn PO Box 980 Valley Forge, PA 19482-0980			YU, GINA C	
			ART UNIT	PAPER NUMBER
			1617	

DATE MAILED: 07/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

### Office Action Summary

**Application No.**

09/763,983

**Applicant(s)**

GILCHRIST ET AL.

**Examiner**

Gina C. Yu

**Art Unit**

1617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 24 December 2003.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-5,7,8,11 and 22-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5,7,8,11 and 22-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

Receipt is acknowledged of Amendment filed February 3, 2004. Claims 1-5, 7, 8, 11, and 22-28 are pending. Claim rejection made under 35 U.S.C. § 112, second paragraph, as indicated in the previous Office action dated August 22, 2003, is withdrawn in view of claim amendment. Claim rejections made under 35 U.S.C. § 103 as indicated in the same Office action are maintained for the reasons of the record.

#### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-5, 7-8, 11, 25, 26, and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bakis et al. (US 5851461) in view of Gilchrist et al. (WO 96/17595).

Rejection is maintained for reasons of record.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bakis et al. in view of Gilchrist et al. as applied to claims 1-5, 7-8, 11, 25, 26, and 27 above, and further in view of Kobayashi et al. (US 5641450).

Rejection is maintained for reasons of record.

Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bakis et al. in view of Gilchrist et al. as applied to claims 1-5, 7-8, 11, 25, 26, and 27 above, and further in view of Kehr et al. (US 4201846).

Rejection is maintained for reasons of record.

Art Unit: 1617

Claims 24 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bakis et al. in view of Gilchrist et al. as applied to claims 1-5, 7-8, 11, 25, 26, and 27 above, and further in view of Clare et al. (US 4693728).

Rejection is maintained for reasons of record.

### ***Response to Arguments***

Applicant's arguments filed February 3, 2004 have been fully considered but they are not persuasive.

Applicants assert that Examples 1 and 2 are two separate procedures of making sterile foams. Applicants argue that "the starting material" in Example 2 is not the product of Example 1, but "a similar type of foam and methodology as described in Example 1 prior to cross-linking, and does not make reference to the actual cross-linked foam product of Example 1. Examiner views that the starting foam material referred in Example 2, line 3, may be referring to the initial foam prior to the first contact with calcium chloride. However, the rejection over Bakis in view of Gilchrist is maintained because even each process of Example 1 and 2 meet the presently claimed method step of contacting the foam with "a second precipitant". Given the broadest interpretation of the limitation, it is viewed that the method step as claimed still reads on the prior art since a precipitation occurs when the calcium chloride -treated foam reacts with HCL.

In response to applicants' argument that the reference fails to teach the weak acids of the instant claim 11, examiner notes that the reference teaches that using acetic acid to produce foam in an acidic aqueous solution is well known. See Bakis, col. 4, lines 11-18.

***Conclusion***

No claims are allowed.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

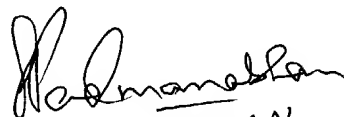
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gina C. Yu whose telephone number is 571-272-0635.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 1617

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Gina Yu  
Patent Examiner



SREENI PADMANABHAN  
SUPERVISORY PATENT EXAMINER